IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.684/2002

Decided on. 12.6.2007

Mulkh Raj **…Petitioner.**

Versus

Municipal Council and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioner :	**Mr. Ashwani K. Sharma, Advocate.**
For the respondent No.1	**Mr. Adarsh Vashist, Advocate.**
For the respondents No.2&3	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan & Ms. Meenakashi Sharma, Deputy Advocate Generals.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that on the basis of a written complaint received from the Engineer Section of the respondent-Council dated 13.8.1998, unauthorized construction raised by the petitioner in Middle Bakrota above MES pipeline road Dalhousie was brought to the notice of the Council without seeking prior permission from the authorities. A notice under section 211 (a) of the H.P. Municipal Act, 1994 (hereinafter referred to as the Act) was issued to the petitioner to stop the construction forthwith and to remove the construction raised by him unauthorisedly. The matter was placed before the meeting of the House of the Council held on 12.2.1999 and vide resolution No. 293 the notice was confirmed. The matter was again

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

placed before the House on 26.2.2000 whereby it was resolved to give another opportunity vide letter dated 6.3.2000 to the petitioner to remove the unauthorized constructed raised by him within seven days. Finally the matter was placed before the House and vide resolution No. 66 dated 8.3.2001, the House had resolved to demolish the unauthorized construction raised by the petitioner. The Executive officer of the respondent-Council on 17th July, 2001 had passed the orders to remove the unauthorized construction within seven days. Feeling aggrieved by the order dated 17th July, 2001, the petitioner had filed an appeal under section 212 (1) of the Act in the Court of learned District Judge, Chamba on 23.7.2001. The learned District Judge, Chamba on the basis of the evidence led by the parties and after going through the Act and Bye-Laws framed thereunder had dismissed the appeal on 20th October, 2001.

Mr. Ashwani Kumar Sharma, Advocate appearing on behalf of the petitioner had vehemently argued that the orders passed by the Executive Officer on 17th July, 2001 and the judgment of the learned District Judge, Chamba dated 20.10.2001 are not sustainable in the eyes of law.

Mr. Adarsh Vashist, Advocate appearing on behalf of the respondent No.1-Council had supported the order dated 17th July, 2001 and judgment dated 20.10.2001 passed by the learned District Judge, Chamba.

I have heard the learned counsel for the parties and perused the record.

The position which emerges from the above stated facts is that immediately after the receipt of the complaint from the Engineering Section; the Council had issued a notice to the petitioner to remove the unauthorized construction. The petitioner did not remove the

unauthorized construction and vide resolution dated 26.2.2000; he was granted another opportunity to remove the unauthorized construction within seven days. He did not remove the unauthorized construction and it was in these circumstances that final decision was taken by the Council on 8th March, 2001 to remove the unauthorized construction. The Executive Officer on the basis of the various resolution passed, as noted above, had issued a detailed order on 17th July, 2001 mentioning therein the various notices issued to him. The Executive Officer vide order dated 17th July, 2001 had granted seven days time to the petitioner to remove the unauthorized construction. The orders passed by the Executive Officer dated 17th July, 2001 cannot be faulted with in any manner.

The learned District Judge had also taken into consideration the pleas raised by the learned counsel appearing on behalf of the petitioner before him and had returned the findings that the construction raised by the petitioner was in violation of the mandatory provisions of the Act and the bye-laws framed thereunder. The learned District Judge had come to a definite conclusion that no document was placed on record justifying the raising of unauthorised construction by the petitioner. The Municipal Council had dealt with the petitioner leniently and despite the order dated 17th July, 2001, another notice was issued to the petitioner on 21st May, 2002 whereby he was again granted seven days time to remove the unauthorized construction. This order has been passed after the judgment of the learned District Judge dated 20.10.2001. Once the order passed by the Executive Officer dated 17th July, 2001 has been affirmed by the learned District Judge on 20.10.2001, the demolition was to be carried out of the unauthorized construction raised by the petitioner. The petitioner besides raising unauthorized construction had also encroached

upon the Government land measuring 0-1-68 hectares in Khasra No. 2198/1390/1 as per Annexure R-3/1.

The upshot of the above discussion is that the petitioner had raised unauthorized construction after encroaching upon the Government land without submission of building plan. The petitioner had chosen not to file reply to any of the notices issued to him. Accordingly order passed by the Executive Officer dated 17th July, 2001, which was upheld by the learned District Judge vide judgment dated 20.10.2001 are in accordance with law. There is neither any jurisdictional error nor any procedural impropriety in the orders impugned.

Accordingly the writ petition is dismissed with no order as to costs.

(Rajiv Sharma), Judge

June 12, 2006
Awasthi